

NO. 84296-5

SUPREME COURT  
OF THE STATE OF WASHINGTON

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PHOENIX DEVELOPMENT, INC., a Washington Corporation and  
G&S SUNDQUIST THIRD FAMILY LIMITED PARTNERSHIP, a  
Washington limited partnership,

Respondents,

v.

CITY OF WOODINVILLE, a Washington Municipal Corporation,  
and CONCERNED NEIGHBORS OF WELLINGTON, a Washington  
nonprofit corporation,

Petitioners,

RECEIVED  
SUPREME COURT  
STATE OF WASHINGTON  
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SUPPLEMENTAL BRIEF OF PETITIONER CONCERNED  
NEIGHBORS OF WELLINGTON

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## I. INTRODUCTION

This case concerns two fundamental issues. First, what body, local governments or courts, should make local zoning decisions under Washington law? Second, what evidentiary and legal standards should be applied by Washington courts in reviewing rezoning decisions made by cities and counties?

The first issue is addressed by the Supplemental Brief filed by the City of Woodinville, in which respondent Concerned Neighbors of Wellington ("CNW") joins.<sup>1</sup> The second issue is addressed in this brief. As will be described herein the Court of Appeals concluded that the decision of the Woodinville City Council was not supported by substantial evidence and did not meet local rezoning criteria. The court did so only by a selective application of critical review criteria in three areas. First, the court gave undue deference to the recommendation of the City's Hearing Examiner, when Washington law clearly states that a final rezone decision can only be made by the City Council and it is that decision which is reviewed by the Court. Second, though the record in this case was extraordinarily lengthy and detailed, the court relied on but a

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<sup>1</sup> RAP 10.1(g) encourages multiple parties to adopt by reference any part of a brief of another party.

single item of evidence to reach its conclusion that the council's decision was not supported by substantial evidence. Third, the Court of Appeals failed to actually address critical criteria found in the City zoning code that support the Council's denial of the requested rezone.

The Court of Appeals misapplied the criteria for both legal and evidentiary review of rezone decisions and its decision should be reversed.

## **II. STATEMENT OF THE CASE.**

This brief is filed by the Concerned Neighbors of Wellington, a local citizens group that urged the Woodinville City Council to retain the R-1 zoning that had been on the subject property ever since Woodinville was incorporated in March 1993. As will be described herein, at the open record hearing CNW presented substantial evidence in support of its position, including several expert witnesses' reports and more than 2100 pages of documentary evidence. See Exhibit 74 to the Administrative Record (herein "CNW Analysis").

The brief of the City and the Court of Appeals decision set forth the relevant factual, legal and procedural history of this case and those references are incorporated herein.

### III. ARGUMENT

#### A. The Substantial Evidence Test Requires Deference to Local Government Decision Makers Which Was Not Afforded by the Decision of the Court.

Under well settled Washington law, the responsibility for rezoning of property lies with local government's legislative bodies, not the courts; the courts will not substitute their judgment for local government even if they might have reached a different result. *Isla Verde Intern. Holdings, Inc. v. City of Camas*, 99 Wn.App. 127, 133, 134, 990 P.2d 429 (1999).

Washington caselaw has also set foundational rules for judicial review of rezone decisions. First, when challenging a decision under the Land Use Petition Act, the appellant bears the burden of proof to demonstrate errors under RCW 36.70C.130(1). *Quality Rock Products, Inc. v. Thurston County*, 139 Wn.App. 125, 134, 159 P.3d 1 (2007).

Second, the corollary to the broad discretion given local government to make zoning decisions is the limited review of these substantive zoning decisions under LUPA. Under RCW 36.70C.130(1)(c), the merits of land use decisions are reviewed under the "substantial evidence" test, which states that the court can grant relief only if:

the land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(Emphasis supplied).

Review under this standard begins with giving deference to the decision of the local legislative body. As our Supreme Court said in a recent decision:

In a challenge for sufficiency of the evidence, " '[w]e view inferences in a light most favorable to the party that prevailed in the highest forum exercising fact finding authority.' " *Id.* (quoting *Schofield v. Spokane County*, 96 Wn.App. 581, 588, 980 P.2d 277 (1999)). Therefore, we view the record and inferences in the light most favorable to CESS because they prevailed before BOCC.

*Woods v. Kittitas County*, 162 Wn.2d 597, 617, 174 P.3d 25 (2007). Indeed, in the present case, the elected City Council of Woodinville unanimously voted to deny the requested rezone.

Washington caselaw has made clear that a court reviewing a rezoning decision of local elected public officials does not weigh the evidence. *Bjarnson v. Kitsap County*, 78 Wn.App. 840, 845, 899 P.2d 1290 (1995) (court's "acceptance of fact-finder's view regarding credibility of the witnesses and the weight to be given reasonable but competing inferences.")

The deference given to local government decisions in LUPA review is substantially identical to the deference given to fact



finding at the trial court level. *Grundy v. Brack Family Trust*, 151 Wn.App 557, 570, 213 P.3d 619 (2009) (“we defer to the finder of fact on issues of credibility and weight of the evidence. *Forbes v. Am. Bldg. Maint. Co. West*, 148 Wn.App 273, 287, 198 P.3d 1042 (2009).”)

There are three additional standards that LUPA requires of a reviewing court in a substantial evidence inquiry.

First, the substantial evidence test is to be applied to the decision of the “highest forum that exercised fact-finding authority.” See *Woods*, 162 Wn.2d at 617. Preliminary review by staff or a hearing officer making recommendations are not reviewed.

Second, the court must review the “whole record before the court.” RCW 36.70C.130(1)(c). This is to assure that the court examines all the evidence before the local decision maker to assure that pertinent supporting evidence is not overlooked.

Third, in construing language of local ordinances, “considerable deference” is given to the interpretation given by a local government to its own ordinance. *Neighbors of Black Nugget Road v. King County*, 88 Wn.App. 773, 778, 946 P.2d 1188, (1997).

The Court of Appeals failed to correctly apply these review

standards.

**B. The Court of Appeals Decision Improperly Relied on a Mere Recommendation, Limited Items of Evidence and Selected Local Regulations in Improperly Overturning the Local Decision.**

The Court of Appeals decision here relied upon what was merely a recommendation to the City Council, citation of but a single exhibit and the failure to even consider the whole of the ordinances that apply to the decision under review. As will be described herein, this selective decision making is not consistent with the standards for judicial review described above.

1. The Court of Appeals Improperly Relied on a Mere Recommendation of the City's Hearing Examiner.

A fundamental error made by the Court of Appeals was its essential adoption of the recommendations of the City's hearing examiner in place of the Council's final decision. Throughout its opinion the Court cited to what the City's hearing examiner said in his recommendation. A citation to each of these references is in the Appendix to this brief at pages A2-A4. Evidently, the Court of Appeals preferred what the hearing examiner thought over what the Woodinville City Council concluded.

This apparent deference to the hearing examiner's recommendation fails to recognize the fundamental tenet of

Washington law that local legislative bodies make rezoning decisions. Under Woodinville's planning ordinances, the hearing examiner only makes a recommendation on rezones. WMC 21.42.110(2). In fact, by statute, Woodinville could not delegate to a hearing examiner the power to make a final rezoning decision. RCW 35A.63.170(2)(c) ("Except in the case of a rezoning, the decision [of a hearing examiner] may be given the effect of a final decision of the legislative body." (Emphasis supplied.))

Elevating the mere recommendation of an unelected hearing examiner into a definitive decision stands the land use process on its head.

2. The Court of Appeals Fixed on a Single Piece of Evidence to Determine There was No Substantial Evidence to Support the Council's Decision, Ignoring a Voluminous and Rich Evidential Record.

Similarly, as the Court of Appeals fixed on the recommendation of the Examiner, it also focused only on the final environmental impact statement ("FEIS") to conclude that the council's decision was not supported by substantial evidence. Pages 3-4 of the subjoined Appendix lists the multitude of quotations of the Court of Appeals to the FEIS.<sup>2</sup> However, the

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<sup>2</sup> The FEIS, contrary to the opinion of the Court of Appeals, does in fact document unavoidable impacts of R-4 development. See Appendix G to Brief of Respondent City of Woodinville in the Court of Appeals. The Court of Appeals

FEIS was the only piece of evidence referenced by the Court of Appeals. *Id.* There was no citation to, or consideration of, any other evidence from the lengthy public record in this matter.

But the record before the City Council was indeed substantial, as may be seen by the following:

Public Hearing for three days:

March 14, 2007 143 pages (30 witnesses)

March 15, 2007 172 pages (32 witnesses)

April 5, 2007 hearing 201 pages

Total pages of Hearing Transcript 516

Hearing Examiner Exhibits:

158 in the Wood Trails proceeding

96 in the Montevallo proceeding

Total exhibits - 254

Hearing before the City Council - 230 pages of transcript

Deliberation before City Council - 67 pages

Pulling a single exhibit from this massive record, and then saying that its contents prove there was no substantial evidence, without any reference to any verbatim testimony, documentary evidence or the opinions of qualified experts defies the legislative mandate to review "the whole record before the court."

3. The Court's Opinion Fails to Mention Mandatory Requirements of Woodinville Zoning That the City Council Concluded Were Not Met.

The opinion of the Court correctly notes that Woodinville's

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went outside the scope of review by weighing the unavoidable adverse impacts of the proposed R-4 against the impacts of R-1 development.

zoning ordinance establishes basic criteria that must be met for approval of a rezone in Woodinville. Under the Woodinville code, all of the criteria must be met before a rezone can be approved, but the Woodinville City Council found that none of them were met.

The court opinion discusses only four of the multiple criteria: adequate services under WMC 21.04.080 (Slip Opinion at pages 12-17); demonstrated need under WMC 21.04.070 (Slip Opinion at pages 17-19); consistency with the comprehensive plan under WMC 21.44.070 (Slip Opinion at page pages 19-23); and substantial relationship to Public Health Safety and Morals under caselaw established rezone criteria (Slip Opinion at page 23-25).

However, there are two other criteria which are required to grant a rezone in Woodinville which the Council concluded were not met, but which the court's opinion neither mentions nor finds in error. These include the following:

a) WMC 21.44.070 requires that a rezone can be granted only if:

(2) The zone classification is consistent and compatible with uses and zoning of the surrounding properties.

The Council concluded that the zone should not be changed because of the history of the area in which the property was

located and the “maintenance of the existing suburban neighborhood character.” Wood Trails decision at Finding 6(a). CNW submitted lengthy materials in its analysis (Volume II, pp. 597-730) demonstrating the incompatibility of the proposed zones with the surrounding neighborhood.

The Council found that both the Wood Trails and Montevallo rezones were “not in character with the surrounding R-1 neighborhoods and properties.” Wood Trails Finding 12 and Montevallo Finding 10. The Court of Appeals gave only passing mention of this code provision, though the FEIS clearly stated that that was “the major issue” that needed to be resolved:

The EIS identifies many issues that will be resolved during City review of the proposal. The major issue regarding the proposals is the compatibility of infill residential development (at 4 dwelling units per acre) with existing lower-density residential development (averaging 1 dwelling unit per acre), and the acceptability to the community of the change associated with this infill. The City will need to resolve that issue when it considers the proposed rezones.

FEIS, pages 1-45 (emphasis supplied). The City findings on that issue, the “major issue” for these rezones, are not questioned by the Court’s opinion.<sup>3</sup>

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<sup>3</sup> The Court’s opinion mentions, without citation to the record, that the rezones are consistent with uses and zoning of the surrounding properties (Slip Opinion at 25), but does not disturb City findings on the subject. The caselaw

b) WMC 21.04.080(2)(b) provides that R-4 densities are only appropriate on “lands that are predominately environmentally unconstrained.”<sup>4</sup>

The City Council concluded that mapping presented during the review process and the FEIS “showed evidence of area-wide environmental constraints as evidenced in the FEIS and exhibits.” See Wood Trails Findings 9 and 10. These findings are well grounded in evidence in the record.

CNW’s rezone analysis at pages 1076 to 1093 demonstrated that there were several environmental constraints on the Wood Trails properties in materials prepared by a licensed professional hydrogeologist (Otto Paris), a highly qualified geologist (Susan Boundy Sanders), and by another experienced geologist, Robert Harmon. See Exhibit 97, Tr. March 14, pages 109-112, and Tr. April 5, pages 10-20. CNW’s mapping showed these environmental constraints on the Wood Trails rezone area, including landslide and erosion hazard areas. See CNW Analysis

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mentioned above does not permit the Court to weigh the differences and similarities between the existing R-1 development and the proposed R-4 developments to make its own findings on a matter particularly suited to the decision of the local legislative body.

<sup>4</sup> As pointed out by the City at page 13 of its brief, this is only part of the purpose section of the zoning ordinance, not the operative criteria found in WMC ch. 21.44

at pages 1076-1160. Mapping of these critical areas and discussion is found at pages 1195-1208 of the CNW Analysis. Indeed, the FEIS acknowledged differing opinions on these matters:

Erosion hazard areas exist on Wood Trails.  
Neighbors, technical experts and the general public  
differ in their views. . .

FEIS, page 1-44. Again the Court does not disturb the City's finding that this important criteria was not met.

#### 4. Summary

The facile attitude of the Court of Appeals, using a mere recommendation, a single exhibit and only a part of the laws of the City to conclude the Council erred, should not be accepted as the role of the court in land use review. The jurisprudence of Washington, carefully developed over the years, should not allow an apparently disapproving Court of Appeals to overturn a carefully considered city decision. The danger here is that the trial courts and the Court of Appeals could use a recommendation, a single item of evidence and only a portion of the applicable zoning rules to take a zoning decision out of the hands of the elected officials and make their own decision. This court should reject this kind of *ad hoc*, subjective decision making. Though this decision favored the



land developer, if this court approves the selective application the law and fact, the next case may be one that overturns a municipal decision approving a rezone in favor of local citizen groups, with the court citing an isolated snippet of opinion, evidence or local ordinance that supports its view of the circumstances. It is appropriate for this court to reign in this kind of subjective decision making.

**D. There Is Abundant Evidence to Support the Findings of the City Council to Deny the Proposed Rezone.**

The Court's opinion discusses five principal points on which it concludes there was not substantial evidence to support the findings made by the Council. As will be described below, in each area there was more than substantial evidence to support the City Council's findings.

**1. Changed Circumstances**

At page 10 of the Slip Opinion, the Court concludes that the required showing of changed circumstances is met if the rezone is consistent with the comprehensive plan, citing *Bjarnson v. Kitsap County*, 78 Wn.App. 840, 846, 899 P.2d 1290 (1995).

However, there is a significant difference between the *Bjarnson* case and the current case. In *Bjarnson*, Kitsap County

had recently changed its comprehensive plan to provide for a regional shopping center; the rezone was necessary to "implement" the change in the comprehensive plan. However, in the present case, the Woodinville Comprehensive Plan was adopted in 1995 (see Wood Trails and Montevallo Finding 3) and the current R-1 zoning was adopted after the comprehensive plan was adopted. R-1 zoning is consistent with the comprehensive plan.

Thus the question is whether there were "changed circumstances" that indicated R-1 zoning, consistent with the comprehensive plan, should be changed to R-4. Wood Trails and Montevallo Finding 6(e) clearly states there were no changed circumstances and this finding was not disturbed by the Court of Appeals.<sup>5</sup>

2. Adequate Services under WMC 21.04.080.

At pages 12-17 of its opinion, the Court concludes that "substantial evidence" does not support the findings of the city that the land to be rezoned is not "served at the time of development by adequate public sewers, water supply, roads, and other needed public facilities and services." See WMC 21.04.080(2)(a).

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<sup>5</sup> These findings are well supported by the CNW Analysis that demonstrated that the neighborhood in which the rezones are proposed has not materially changed since 1986. See CNW Analysis at pages 601-602.

The Council found that adequate services could not be provided to support the proposed R-4 rezone:

The lack of adequate public facilities and services to support the proposed R-4 development, including, but not limited to the substandard roads and pedestrian walkways providing access to and from the subject property, the absence of any City parklands within walking distance of the subject property and the absence of public transit services serving the neighborhood area.

Finding 6(c) for both the Wood Trails and Montevallo rezones.

The Court concluded that: "[T]he council does not identify any services that cannot be provided to Montevallo or Wood Trails." Slip Opinion, page 16. However, as seen above, the Council did clearly spell out what services were inadequate: roads, sidewalks, parks and transit.

The Court focused on transportation issues and concluded that "there is no evidence that transportation cannot be provided to the proposed developments." Slip Opinion at 16. But the court applies the wrong criteria: it is not that *no services* can be provided, but that *adequate services* cannot be provided as set forth in WMC 21.04.080.

The Council's finding of a lack of adequate roads is richly supported in the record. CNW expert witness Roger Mason, a licensed professional engineer with 25 years experience in

transportation planning concluded that "local access roads do not meet commonly accepted standards" and there will be "increased safety risks with the new development" as well as no sidewalks or transit services nearby. See Volume 1 of the CNW Analysis at pages 20-144. See also Mr. Mason's testimony in the transcript for March 15 at pages 104-118. As to parks, even the FEIS admits there are "no existing City of Woodinville parks, recreational facilities or properties (developed or undeveloped) in the West Wellington neighborhood or within close walking distance." FEIS, p. 3.6-1. (Emphasis supplied.)

The assurance that services are currently available is perfectly consistent with the hierarchy of when urban growth will be permitted under the GMA:

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are provided by either public or private sources, and third in the remaining portions of the urban growth areas.

RCW 36.70A.110 (Emphasis supplied). The City's decision to deny this rezone when adequate services are not available is consistent with its own long established code requirements.

### 3. Demonstrated Need.

At page 17-19 of the Slip Opinion, the Court concludes that there was not substantial evidence to support the Council's finding that Phoenix did not demonstrate a need for the proposed zoning.

The Council found that residential growth targets had been established by the Growth Management Act and that these goals for new residential growth were being met. Accordingly, there was no "demonstrated need" for higher density zoning. Wood Trails and Montevallo Finding 7. A finding of no demonstrated need is consistent with the goal of the Woodinville Comprehensive Plan at LU1-1 to preserve the character of existing neighborhoods while accommodating year 2020 growth projections with increased density in other city neighborhoods which are served by adequate roads, parks and other services.

This finding was fully supported by significant and substantial evidence. The City's own Planning Director said that the city "does not need residential rezones to comply with its comprehensive plan" or other city goals and visions. TR March 14 at page 38. Further, the CNW Analysis of the rezone requests shows that the City has an excess of 477 building units over its 20 year planning period, without the Wood Trails or Montevallo

rezones. See CNW Analysis, pages 516-520.

By ignoring competent and substantial evidence in the record that there was no need for the proposed rezones the Court of Appeals wrongfully substituted its judgment for that of the City Council.

4. Consistency with Comprehensive Plan.

At pages 19-23 of the Slip Opinion, the Court concludes that “[t]he council erred when it concluded the proposed rezones were inconsistent with the comprehensive plan.” In fact, the Council concluded that the current R-1 zoning was consistent with the comprehensive plan. See Wood Trails and Montevallo Findings 4 and 5. Conclusion 1 in both decisions determined that “a site specific rezone of the property to R-4 density would be inconsistent with significant Comprehensive Plan policies. Council Finding 2 (in each of its decisions) incorporates the hearing examiner Finding 10 for Wood Trails and 11 for Montevallo which lists the comprehensive plan policies identified by the hearing examiner as relevant, including LU-1.1 to preserve neighborhood character while accommodating for GMA Growth Forecasts; LU-1.2 to guide growth to areas with capacity, where impacts will be minimized, and where growth will help an area’s appearance or vitality; LU-1.3 to

phase growth and municipal services together; LU-22 to connect development, open space and recreation areas by planned street, path, and utility corridor networks; LU-3.1 for development to compliment existing residential development patterns; LU-3.2 to preserve neighborhood natural environment; ENV-3.4 to maintain critical area connectivity; and ENV-4.1 to protect public safety and potential seismic, flood hazard and slide hazard areas. . . .” The Council’s interpretation of its own comprehensive plan is entitled to substantial deference by the Court. CNW, as the prevailing party, is entitled to a review of the record “in the light most favorable to it.”

See *Woods v. Kittitas County*, *supra*, 162 Wn.2d at 617.

Several comprehensive plan policies were identified during the hearing which demonstrated that the proposed rezone was inconsistent.<sup>6</sup> These include the following:

LU-1.1 Preserve the character of existing neighborhoods in Woodinville while accommodating the state’s 20-year growth forecasts for Woodinville.

LU-1.2 Encourage future development in areas:

1. With the capacity to absorb development (i.e. areas with vacant or underdeveloped land and available utility, street, park and school capacity, or where such facilities can be cost

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<sup>6</sup> These Comprehensive Plan policies were incorporated into Council Finding No. 2. in each of the Council Decisions. Finding No. 2 incorporates by reference Hearing Examiner Finding No. 10 for Wood Trails and Finding No. 11 for Montevallo, each of which list the relevant comprehensive plan policies.

effectively provided

GOAL LU-2 To establish land use patterns, densities of site designs that encourage less reliance on single-occupant vehicle travel

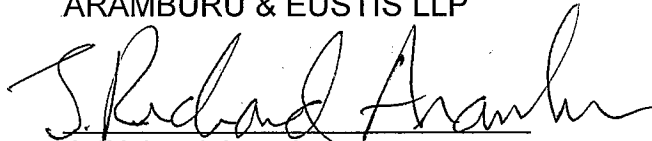
The evidence in the record included the Sustainable Development Study prepared by the City, which found that the character of the neighborhood in which the rezones are requested "is best preserved by lower density zoning." See Exhibit 74. at page 718. A more thorough analysis of neighborhood character is found in the "Well Established Subdivision" section of the same CNW Analysis at pages 692-700. In sum, competent evidence supported the Council's decision.

#### **IV. CONCLUSION AND REQUESTED RELIEF.**

CNW respectfully submits that the opinion of the Court of Appeals in this case misapprehended the role of the Court in rezoning matters and should be reversed.

DATED this 8<sup>th</sup> day of SEPT, 2010.

ARAMBURU & EUSTIS LLP



J. Richard Aramburu

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Attorney for Concerned  
Neighbors of Wellington



APPENDIX	
COA 62167-0-I Slip Opinion, November 2, 2009 - Citation Summary	
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The key issues addressed in the DEIS were soil stability, seismic hazards, and erosion potential; surface water, ground water/seepage and water runoff; wildlife, threatened or endangered species, habitat and migration routes; land use, plans and policies, neighborhood character, open space and environmentally sensitive areas; transportation, existing and proposed street system, motorized traffic, non-motorized traffic/pedestrian movement/school safe walk routes and safety hazards; and parks and recreation.	3
The DEIS evaluated the proposed developments (proposed action) and three alternatives: (1) development at the current R-1 zoning with individual septic systems like the existing land uses in the Wellington neighborhood (R-1 zoning alternative), (2) development of attached housing (townhomes) on the Wood Trails property, with single-family lots on the Montevallo property (attached housing alternative), and (3) no development on either site (no action alternative).	3
The final environmental impact statement (FEIS) published in December 2006 provided additional analysis and clarification of several elements, descriptions of minor changes to Phoenix's proposal, and responses to public comments.	3
The FEIS includes tables comparing the impacts, mitigation, and significant unavoidable adverse impacts of the proposed action and each alternative action on the Wood Trails and Montevallo sites. <sup>5</sup> These tables show that the majority of the significant unavoidable adverse impacts for the proposed action are also likely to occur under the R-1 zoning alternative.	4
The FEIS concludes that "[a]ll likely impacts could be mitigated "by adopted City regulations and/or by elements incorporated into the design of the proposal" to a level that is considered less than significant." <sup>6</sup>	4
Rather, the council found that there were "unavoidable adverse impacts to transportation systems" identified by the FEIS which "can be avoided by denial of the rezone." <sup>41</sup>	16
The FEIS states that "none of the alternatives would generate sufficient additional traffic or changes in traffic patterns to cause significant impacts to the existing level of service . . . ." <sup>42</sup>	16

The FEIS also states that the R-1 development alternative—the development the city now suggests Phoenix can build—would actually generate more daily traffic on some streets than the proposed action, due to the differences in access plans between the alternatives. <sup>43</sup>	16-17
The FEIS analyzes the impact of the proposed action and the alternatives under approximately 25 policies enumerated in the city's comprehensive plan, including land use, housing, community design, capital and public facilities, and environmental policies. <sup>58</sup>	22
The FEIS identifies no inconsistencies between the proposed rezones and the land use policies in the comprehensive plan.	22
The proposed action was described as more consistent than the R-1 zoning alternative in regard to both housing policies discussed in the FEIS. No inconsistencies were found with the community design policies or the capital and public facilities policy.	22-23
As stated in the FEIS, the proposed action does more to further this goal than any of the alternatives evaluated by the city in the FEIS. <sup>63</sup> The proposed action also furthers LU-1.3, the city's goal of phasing growth and municipal services together, by extending sanitary sewer, building on-site storm drainage facilities, and making street frontage improvements. <sup>64</sup> The proposed action furthers LU-3.7 and housing policy H-1.1 by increasing the variety of housing types and lot sizes in the area, which is currently developed as large one-acre residential lots. <sup>65</sup> The proposed rezones further a number of comprehensive plan policies and therefore bear a substantial relationship to the public health, safety, morals, and welfare.	24

COA 62167-0-I Slip Opinion, November 2, 2009 - Citation Summary	
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The Hearing Examiner recommended that the city council approve the rezones from R-1 to R-4.	5
The hearing examiner also recommended approval of the subdivision of Wood Trails into 66 lots with the transfer of nine lots to Montevallo and the subdivision of Montevallo into 56 lots, subject to numerous conditions. <sup>10</sup>	6
In the decision for each property, the hearing examiner clearly set for the the R-4 rezone criteria, applied those criteria to his findings, and concluded that all criteria were met.	6
In recommending that the rezones be approved, the hearing examiner recognized that under WMC 21.04.080, [d]evelopments with densities less than R-4 are allowed only if adequate services cannot be provided. <sup>44</sup> The hearing examiner concluded that "the Woodinville code in place when this application vested, stated that this property could not be developed as R-1 because utilities are available." <sup>45</sup>	17
Phoenix urges the court to adopt the hearing examiner's view, arguing that the examiner "presented a thorough analysis and resolution of this issue."	17
The hearing examiner concluded that there is a demonstrated need for additional zoning of the type proposed by Phoenix. The hearing examiner's recommendation considered all evidence presented. Although the staff report did not contain a recommendation as to demonstrated need, the hearing examiner considered the opinion expressed in the staff report that the city can meet its required housing allocation under the GMA for the planning period of 2001 to 2022 without further zone changes to higher density.	17-18
The hearing examiner also considered evidence presented by CNW that a large number of homes similar to those proposed by Phoenix are available for sale within 10 miles of the proposed developments, although those homes are not necessarily in Woodinville. <sup>47</sup>	18
Finally, the hearing examiner considered evidence presented by Phoenix that the city used a flawed analysis in reaching the conclusion that additional R-4 zoning was not needed. He also considered evidence that land zoned R-1 constitutes approximately 30 percent of the total area of the city and approximately 50 percent of the residentially zoned land, while available land zoned R-4 constitutes less than 2.7 percent of the city. <sup>48</sup>	18

The hearing examiner concluded, "Clearly more R-4 Zoning is needed to create a diversity of building sites availability [sic] by establishing more areas where detached single-family can be constructed at lower densities [sic] than R-1 densities. In addition, the Growth Management Hearings Board has held that Woodinville is not to perpetuate one-acre lots that will effectively thwart urban development. <sup>[49]</sup> "	18
The hearing examiner's conclusion that the city's relative lack of R-4 zoning compared with its abundance of R-1 zoning demonstrates a need for additional single-family zoning at densities that help to further the goals of Woodinville's comprehensive plan and the GMA is supported by the record.	19
The hearing examiner found that the proposals were "reasonably compliant with the Woodinville Comprehensive Plan," and adopted and incorporated the relevant portions of the staff report into his decision.	19-20
The hearing examiner specifically found that "the zone change will allow the development of low-density detached single-family homes in an area designated in the comprehensive plan as low density residential. While arguments have been made that the adjacent neighborhood is much less dense, R-4 is still classified as low density. In addition, buffering as recommended by the City, can alleviate impacts from a slight difference in density. The site will be served with City water and sewer and the street network will be improved. The west side of the site will be left in a Native Growth Protection Area . . . . It presents a range of densities, which encourages a variety of housing types to serve a variety of income levels. It preserves much of the natural features of the site, such as the wetland and will preserve trees in accordance with the City's Tree Retention regulations. <sup>[52]</sup>	20
However, as the hearing examiner pointed out, R-4 is also considered low density zoning under WMC 21.04.080(1)(a).	22
Here, the hearing examiner relied on Henderson to conclude that the proposed rezones promoted the public health, safety, morals, and welfare because they were consistent with the comprehensive plan.	24